

FILED 09 AUG 05 10 51 USC ORP

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

GLEN ALAN PUTNAM,

CV. 08-486-KI

Plaintiff,

PRO SE PRISONER
ADVICE ORDER

v.

THEODORE KULONGOSKI, et al.,

Defendants.

KING, Judge

The defendants have filed a motion for summary judgment based upon several grounds. To the extent that defendants move to dismiss based upon plaintiff's failure to exhaust his administrative remedies, I am converting the motion to an unenumerated motion to dismiss pursuant to Rule 12(b) of the Federal Rules of Civil Procedure.

Plaintiff is advised that I intend to rule on the single ground that you have not exhausted your administrative remedies. The motion will, if granted, end your case.¹

¹ If the motion is denied, plaintiff will be ordered to respond to the remaining grounds raised in defendants' motion for summary judgment.

When a party you are suing makes a motion to dismiss for failure to exhaust, and that motion is properly supported by declarations (or other sworn testimony) and/or documents, you cannot simply rely on what your complaint says. Instead, you must set out specific facts in declarations, depositions, answers to interrogatories, or documents, that contradict the facts shown in the defendant's declarations and documents and show that you have in fact exhausted your claims. If you do not submit your own evidence in opposition, and the defendant's evidence establishes that you did not exhaust your administrative remedies, the motion to dismiss will be granted, your case will be dismissed, and there will be no trial.

CONCLUSION

Plaintiff shall file a response to defendants' motion, to the extent it alleges the failure to exhaust administrative remedies, on or before September 8, 2009. Defendants may file a reply within 11 days thereafter. Defendants' motion (#26), to the extent that it pertains to the exhaustion of administrative remedies, shall be taken under advisement on September 21, 2009.

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IT IS FURTHER ORDERED that plaintiff's motion for a 90-day extension of time to respond to defendants' motion for summary judgment (#34) is DENIED AS MOOT. As noted above, if plaintiff demonstrates that he exhausted his administrative remedies, he will then be given additional time to respond to defendants' remaining arguments in support of summary judgment.

IT IS SO ORDERED.

DATED this 4 day of August, 2009.



Garr M. King
United States District Judge